

**HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
and
HON'BLE SHRI JUSTICE G.BHAVANI PRASAD**

W.A.NO.361 OF 2006

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Between:
Smt.S.Rajyalakshmi.

..... Appellant

AND

The District Collector, Krishna and 3 others.

.....Respondents

::JUDGMENT::

Counsel for the Petitioner : Sri VHVRR Swamy

Counsel for Respondents : Government Pleader for Civil

Supplies

Dated 6/4/2006

Per Sri G.S.Singhvi, CJ

Having failed to persuade the learned Single Judge to interfere with the concurrent findings recorded by Revenue Divisional Officer, Nuzvid, Krishna District (respondent No.3), Joint Collector, Krishna at Machilipatnam (respondent No.2) and District Collector, Krishna at Machilipatnam (respondent No.1) that after marriage, she was residing in Siripuram village, Madhira Mandal, Khammam District and thereby incurred disqualification to continue as fair price shop dealer for Tiruvuru Village, the appellant has preferred this appeal.

The appellant was appointed as fair price shop dealer for Tiruvur village some time in 1994. After her marriage, she started residing in Siripuram Village and her brother took control of the fair price shop. On receipt of a complaint that the appellant was not operating the fair price shop, respondent No.3 got an enquiry conducted through Mandal Revenue Officer, Tiruvur. The latter submitted report with the finding that the appellant was no longer operating the fair price shop and that her brother was controlling the shop. Thereafter, by an order dated 23.8.2003, respondent No.3 suspended the authorization of the appellant. Simultaneously, an enquiry was initiated against the appellant and in her place one Smt. M. Krishnakumari was appointed as temporary fair price shop dealer. The appellant challenged the same in Writ Petition No17841 of 2003. By an order dated 20.6.2003, this Court directed the official respondents to supply commodities to the writ petitioner if her authorization was subsisting. However, the appellant could not take benefit of the interim order passed by the Court because, as mentioned above, her authorization had already been suspended. Sub Divisional Tahsildar

(PDS), Tiruvur, who was appointed to enquire into the allegations levelled against the appellant, submitted report with the finding that the appellant was residing at Siripuram Village of Madhira Mandal since 1997 and she was running the shop with the help of her brother Sri S. Naveen.

In the meanwhile, the appellant challenged the suspension of her authorization by filing an appeal before respondent No.2. Initially, respondent No.2 stayed the order passed by respondent No.3, but, after dismissal of Writ Petition No.17841 of 2003, he vacated the stay order. The appellant then filed another petition before the High Court questioning order dated 6.2.2004 passed by respondent No.2. The same was disposed of with the direction that the enquiry pending against the appellant be completed.

In compliance of the Court's order, the authorization of the appellant was restored on 18.5.2004. She was then served with three notices to attend the enquiry on 24.5.2004, 14.6.2004 and 2.8.2004. She appeared on 14.6.2004, but absented on the remaining dates. She sent telegram dated 2.8.2004 for adjournment on the ground that she was not well, but her request was turned down by respondent No.3, who passed order dated 29.10.2004 for cancellation of her authorization. Appeal preferred by the appellant against the order of cancellation was dismissed by respondent No.2 vide his order dated 12.9.2005 by recording the following observations.

“....I have gone through the entire case record. It is observed that the appellant is residing in Siripuram Village of Madhira Mandal, Khammam District with her husband after her marriage and doing kirana and cool drinks business at Siripuram Village. Her brother Sri S. Naveen is running the FP Shop alone without her involvement unauthorisedly.

It is also observed that the Advocate has filed the copies of Judgments issued by the Hon'ble High Court said to have been issued in similar cases. But, this instant case is different from those cases, as the brother of the FP Shop dealer himself admitted in his statement dated 12.8.2003 given before the Mandal Revenue Officer Tiruvuru that he is

running the FP Shop since 4 years i.e. after his sister's marriage.

In the G.O.Ms.No.53, Consumer Affairs, Food and Civil Supplies (CS-I) Department dated 6.10.2003 Annexure under sub-heading 12 General (xiii) it is mentioned that "The applicant should personally run the FP Shop and not run it benami or through an agent. However, women dealers may take the assistance of their family member (s) whose name or names are included in the dealer's supply card. If a women dealer gets married and in the event her leaving the village, she must relinquish the dealership". As per this order, she ought to have relinquished the dealership as she left the village after her marriage and residing in Siripuram Village of Madhiral Mandal, Khammam District with her husband..."

The appellant challenged the aforementioned order by filing revision petition before the 1st respondent. She then filed Writ Petition No.21776 of 2005 with the complaint that the decision of the revision petition was being unduly delayed. The same was disposed of by the learned Single Judge on 6.10.2005 with the direction that District Collector (respondent No.1 herein) should decide the revision petition within a period of four weeks from the date of receipt of copy of the order. Thereafter, respondent No.1 vide his order dated 30.11.2005 dismissed the revision petition. He dealt with all the contentions raised on behalf of the appellant and negatived the same. The relevant extracts of that order are re-produced below:

"The contention of the Advocate on behalf of the revision petitioner that the revision petitioner is attending to distribution of ECS now and then is totally incorrect as per the statement given by the brother of the revision petitioner on 12.8.2003 before the Mandal Revenue Officer at the time of inspection stating that he himself is running the FP Shop since four (4) years i.e., after his sister's marriage. As such the revision petitioner ought to have relinquished the FP Shop authorization after her marriage as she is living with her husband at Siripuram Village of Madhira Mandal, Khammam District.

As per the G.O.Ms.No.53 Consumer Affairs, Food and Civil Supplies (CS-I) Department, dated 6.10.2003

Annexure under sub-heading 12 General (xiii) it is mentioned that "The applicant should personally run the FP Shop and not run it benami or through an agent. However, women dealers may take the assistance of their family member (s) whose name or names are included in the dealer's supply card. If a woman dealer gets married and in the event of her leaving the village, she must relinquish the dealership".

In the circumstances of the case, the dealer has got married four years earlier and moved to Siripuram Village of Madhira Mandal, Khammam District and residing there leaving the Tiruvur Town where FP Shop is located which is in contravention of the rule under G.O.Ms.NO.53, Consumer Affairs, Food and Civil Supplies (CS-I) Department dated 6.10.2003."

Unfazed by three adverse orders passed by respondents 3, 2 and 1 respectively, the appellant filed Writ Petition No.26997 of 2005 with the prayer that the same may be quashed and the respondents be directed to continue her as fair price shop dealer.

The learned Single Judge dismissed the writ petition by observing that finding recorded by the authorities concerned that the appellant was no longer residing in Village Tiruvur does not suffer from any legal error.

Learned counsel for the appellant made strenuous efforts to convince us that order dated 29.10.2004 passed by respondent No.3 cancelling his client's authorization as fair price shop dealer is vitiated due to violation of rules of natural justice because no action oriented notice or opportunity of hearing was given to her and that the learned Single Judge committed an error by approving the patently illegal and arbitrary orders passed by three authorities, but we have not felt impressed. In our opinion, the concurrent finding recorded by respondent Nos.3, 2 and 1 that after her marriage, the appellant was residing in Village Siripuram, Madhira Mandal and, therefore, she is not entitled to continue as fair price shop dealer at Tiruvur, does not suffer from any legal infirmity and the learned Single Judge did not commit any error by refusing to entertain the appellant's challenge to orders dated 29.10.2004, 12.9.2005 and 30.11.2005.

A reading of order dated 29.10.2004 shows that in his statement, Sri S. Naveen (brother of the appellant) candidly admitted that she was residing at Siripuram Village of Madhira Mandal. The appellant was given notice of personal hearing on 24.5.2004, 14.6.2004 and 28.2.2004 to appear for personal hearing. She did appear on 14.6.2004 but did not attend at the hearing on the remaining two days. Therefore, after taking into consideration the statement of the appellant's brother and other records, respondent No.3 concluded that the appellant is running fair price shop as benami. Respondent Nos.2 and 1 independently considered this issue and approved the conclusion recorded by respondent No.3. It is thus clear that the concurrent finding recorded by the three authorities constituted under the Andhra Pradesh State PDS (Control) Order, 2001 is based on a correct appreciation of the material brought on record of the proceedings initiated against the appellant.

Though the learned Single Judge has not referred to the limited scope of writ of certiorari, we deem it proper to reiterate that even if a different opinion could possibly be formed on the basis of re-evaluation of the evidence produced before respondent No.3, the learned Single Judge could not have upset the concurrent finding of fact that after her marriage, the appellant had left the village and her brother was running the fair price shop.

It is settled law that a writ of certiorari can be issued against an order passed by the Subordinate Court or Tribunal or a quasi-judicial authority if the same is without jurisdiction or is in excess of the jurisdiction or is violative of the rules of natural justice or is vitiated by an error of law apparent on the face of the record. To put it differently, the High Court can issue a writ of certiorari if it is found that the order under challenge has been made by the Court or Tribunal or quasi-judicial authority which did not have the jurisdiction to pass such order or where such Court, Tribunal or Authority has failed to exercise the jurisdiction vested in it or where the action complained of has been taken in disregard of rules of natural justice. A writ of certiorari can also be issued if it is shown that while

passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority

ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous consideration/factors. However, a writ Court cannot sit in appeal over the orders of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court, Tribunal or Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ Court cannot go into sufficiency and adequacy of evidence which may have been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion.

In **Syed Yakoob v. K.S. Radhakrishnan**^[1] the Supreme Court considered the High Courts' power to issue a writ of certiorari and held:

A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has

influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.

In **Surya Dev Rai v. Ram Chander Rai**^[2] the Supreme Court noted the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

- i) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.
- ii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.
- lii) In practice, the parameters for exercising jurisdiction to

issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

iv) The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge."

The question whether the order cancelling the authorization of the fair price shop is vitiated due to violation of the rules of natural justice was not urged before the learned Single Judge. Therefore, the same cannot be allowed to be raised in the appeal. In our opinion, the right to notice and opportunity of hearing was purely personal to the appellant. It was

open to her to waive the said right. By not raising the said plea before the learned Single Judge, she will be deemed to have waived her right to challenge the orders passed by respondent Nos.3, 2 and 1 on the ground of denial of opportunity of hearing. Moreover, as mentioned above, before ordering cancellation of the authorization, respondent No.3 issued notices to the appellant on 24.5.2006, 14.6.2004 and 2.8.2004. The appellant did attend hearing on 14.6.2004 but abstained on the remaining dates. Therefore, it does not lie in her mouth to contend that the action taken by the concerned authority for cancellation of her authorization is vitiated due to violation of the rule of hearing.

In the result, the writ appeal is dismissed.

G.S.SINGHVI, CJ

Dt.6/4/2006

G.BHAVANI PRASAD,J

Msv/vtv

[\[1\]](#) AIR 1964 SC 477

[\[2\]](#) AIR 2003 SC 3044